

STATE OF MICHIGAN
COURT OF APPEALS

GHOST RIDERS MOTORCYCLE CLUB, INC.,

Plaintiff-Appellant,

v

GHOST RIDERS MOTORCYCLE CLUB, a/k/a
GHOST RIDERS MOTORCYCLE CLUB OF
DETROIT, a/k/a GHOST RIDERS
MOTORCYCLE CLUB DETROIT, MICHAEL
ARTHUR WALKER, MICHAEL JOHNSON, and
GERALD LLOYD, a/k/a CNOTE,

Defendants-Appellees.

UNPUBLISHED

May 22, 2012

No. 301737

Wayne Circuit Court

LC No. 10-000627-CB

Before: DONOFRIO, P.J., and JANSEN and SHAPIRO, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order denying its request to enjoin defendant from calling itself "Ghost Riders Motorcycle Club" or other similar formulations. We reverse because defendant's name constitutes a colorable imitation of plaintiff's name.

At issue in this case are two motorcycle clubs organized in Michigan which both use the name "Ghost Rider Motorcycle Club." Plaintiff was established first, in 1971, and was incorporated in Michigan in 1978 as "Ghost Riders Motorcycle Club." Defendant was established approximately nine years ago under that same name, and also uses the names "Detroit Ghost Riders" or "Ghost Riders Detroit Motorcycle Club." Both parties wear unique patches on their vests to identify their respective motorcycle clubs, as is standard practice in the United States.

We review the trial court's denial of injunctive relief for an abuse of discretion. *Pontiac Fire Fighters Union Local 376 v City of Pontiac*, 482 Mich 1, 8; 753 NW2d 595 (2008). We review its findings of fact for clear error and review de novo any issues of statutory interpretation. *In re LE*, 278 Mich App 1, 17; 747 NW2d 883 (2008).

Plaintiff filed an action in the circuit court seeking to enjoin defendant from using the name "Ghost Rider Motorcycle Club" or similar phrases, under MCL 430.101 which provides:

No person, society, association or corporation shall assume, adopt or use the name of a military, ex-military, patriotic, benevolent, humane, fraternal or charitable organization incorporated or organized and doing business under the laws of this or any other state of the United States, or a name so nearly resembling the name of such incorporated organization as to be a colorable imitation thereof, or calculated to deceive persons not members, with respect to such corporations. In all cases where 2 or more such societies, associations, corporations or organizations claim the right to the same name or to names substantially similar, as above provided, the organization which was first organized and used the name and first became incorporated or organized under the laws of the United States or of any state in the Union shall be entitled in this state to the prior and exclusive use of such name, and the rights of such societies, associations, corporations or organizations and of their individual members shall be fixed and determined accordingly.

Under this statute, where two parties use the same or substantially similar names, the party which first organized and used the name “under the laws of the United States or of any state in the Union shall be entitled in this state to the prior and exclusive use of such name.” Upon finding a violation of this statute, a court may issue an injunction restraining such violation “without requiring proof that any person has in fact been misled or deceived thereby.” MCL 430.104.

We conclude that the two requirements of MCL 430.101 were met in this case and that the trial court so found. First, it was undisputed, and the trial court found, that plaintiff is a fraternal organization doing business in Michigan and was incorporated under Michigan law under the name Ghost Riders Motorcycle Club, Inc. since the 1970s while Defendant did not organize until sometime after 2000.¹ Second, the trial court found that defendant’s name so closely resembles plaintiff’s that confusion is probable. Defendant, having not filed a brief on appeal has not disputed this finding, nor does it appear to us that the finding was in error.

Therefore, plaintiff has met the two requirements of MCL 430.101, and under MCL 430.104 is entitled to an injunction preventing defendant from using plaintiff’s name or a colorable imitation thereof. See also *First Congressional Dist Democratic Party Org v First Congressional Dist Democratic Org, Inc*, 22 Mich App 386, 388-389; 177 NW2d 224 (1970)

¹ The situation is complicated by the fact that defendant is now a chapter of a national Ghost Riders organization that may have pre-existed defendant. However, there is no evidence in the record indicating the exact age of the national group, and defendant has not asserted that the national group is older than plaintiff. On the record before us, the trial court did not err in determining that plaintiff’s use of the name “Ghost Riders Motorcycle Club” predates that of defendant and we need not address the implications, if any, of claims by other entities as to the use of the name.

(finding a violation warranting injunctive relief where the names of the parties contained the same words in the same order and arrangement).

In spite of its findings, the trial court denied plaintiff's request for an injunction on the grounds that plaintiff has not been injured by defendant's use of the same name and that the term "Ghost Rider" is a generic term such that plaintiff cannot exclude others from using it. The trial court cited *220 Bagley Corp v Julius Freud Land Co*, 317 Mich 470; 27 NW2d 59 (1947) for the requirement that a plaintiff demonstrate some injury before being granted relief. However, that case involved two businesses, and did not involve the statutes at issue in this case. The language of MCL 430.101 makes no reference to an actual injury on plaintiff's part, and MCL 430.104 specifically states that a plaintiff need not show that anyone has actually been misled by a defendant's similar name. Therefore, *220 Bagley* is inapplicable.

Similarly, the statute makes no exceptions for names containing generic terms. The question is whether the defendant's name is a colorable imitation of plaintiff's name, or calculated to deceive the public. While we agree with the trial court that there was no intent to deceive in this case, as stated above defendant's name is clearly a colorable imitation of plaintiffs. Further, while we do not read the statute to prevent any use of the term "Ghost Riders" by other organizations, the addition of the phrase "Motorcycle Club" provides critical context, clearly distinguishing plaintiff from the comic books, movies, military units, and veterans' groups which also use some form of the term "Ghost Rider" in their names. Plaintiff could not prevent such other uses of the term "Ghost Rider," but the present case is different because defendant's name is so similar to plaintiff's that, as the trial court found, confusion is probable. Under these circumstances, MCL 430.101 and 430.104 give plaintiff the right to an injunction against defendant.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Pat M. Donofrio
/s/ Kathleen Jansen
/s/ Douglas B. Shapiro